

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DANITA LONG

Claimant

VS.

GOODYEAR TIRE & RUBBER COMPANY

Respondent

Self-Insured

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Docket No. 195,420

ORDER

The claimant requests the Appeals Board review the Preliminary Hearing Order of Administrative Law Judge Floyd V. Palmer entered on March 2, 1995.

ISSUES

The Administrative Law Judge denied claimant's request for medical treatment benefits. The claimant contends claimant's alleged mental condition was caused by her work injury and, therefore, arose out of and in the course of her employment. It is, therefore, asserted that the Appeals Board has jurisdiction to review the Administrative Law Judge's denial of benefits for treatment of claimant's psychiatric condition.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing, the Appeals Board finds, as follows:

(1) At this juncture of the proceeding, the Appeals Board lacks jurisdiction to review the issue whether the Administrative Law Judge erred in denying claimant medical benefits for the alleged psychiatric condition.

For purposes of preliminary hearing, the parties agree claimant has suffered an accidental injury arising out of and in the course of her employment with the respondent. The question whether claimant's psychiatric difficulties are related to the work-related accident, or some other source of distress, deals with the issue of nature and extent of disability rather than one of the jurisdictional issues enumerated in K.S.A. 44-534a.

The Legislature empowered the Appeals Board under K.S.A. 44-534a to review preliminary findings pertaining to the following: (1) whether the employee suffered an

accidental injury; (2) whether the injury arose out of and in the course of the employee's employment; (3) whether notice was given or claim timely made; and (4) whether certain defenses apply. Nature and extent of injury is not a preliminary finding that the Appeals Board may review. Further, the Administrative Law Judge has not exceeded his jurisdiction and authority; therefore, the Appeals Board does not have jurisdiction to review this Preliminary Hearing Order under K.S.A. 44-551, as amended by S.B. 59 (1995). This ruling comports with many of our earlier decisions.

(2) The above finding disposes of the remaining arguments of respondent regarding claimant's entitlement to benefits.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Floyd V. Palmer, dated March 2, 1995, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of June 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Derek J. Shafer, Topeka, KS
 James E. Benfer, Topeka, KS
 Floyd V. Palmer, Administrative Law Judge
 George Gomez, Director